

TRADUCTION/TRANSLATION

**IN THE MATTER OF THE OPPOSITION
BY Continental Bazar Inc. to application
No. 896,942 filed by Le Festival International
de Jazz de Montréal Inc. for registration of the
trade-mark FESTIVAL INTERNATIONAL
DE JAZZ DE MONTRÉAL**

On November 23, 1998, Le Festival International de Jazz de Montréal Inc. (the "Applicant") filed an application for registration of the trade-mark FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL (the "Mark") based on its use in Canada by the Applicant and its predecessor in title, Alain Simard.

At the examination stage, the application was subject to an objection based on paragraph 12(1)(b) of the *Trade-marks Act*, R.S.C. 1985, c. T-13 (the "Act"), on the ground that the Mark clearly described that the wares "television programs, passes, recorded compact disks" as well as the services were related to a jazz festival involving the participation of artists from several countries that took place in Montreal. Moreover, the Registrar required a disclaimer of the right to the exclusive use of MONTRÉAL apart from the Mark in association with the other wares on the ground that Montréal clearly described their place of origin. Following the objection, the Applicant filed a revised application claiming benefit of subsection 12(2) of the Act and amending the declaratory statement of wares and services as follows:

WARES: (1) T-shirts, since at least as early as March 1981. (2) Peak caps, umbrellas, belt bags, decorative pins, key holders, cups, watches, water bottles, playing cards, puzzles, sweaters, camisoles and shorts, since at least as early as June 24, 1994. (3) Posters, kitchen aprons, cigarette lighters, chairs, belts, necklaces, scarves, beach towels, bibs, jewellery, polos, shirts, carry-all bags and coats, since at least as early as June 24, 1995. (4) Hats, note pads, backpacks, post cards, glasses and phone cards for local or long distance calls, since at least as early as June 26, 1996. (5) Ponchos, satchels, fridge magnets, underclothing, lunch boxes and pre-recorded music CDs, since at least as early as June 25, 1997. (6) Carpets, since at least as early as July 1, 1998.

SERVICES: Operation of an entertainment business specializing in the production, distribution and broadcasting of television programming and the organization, presentation, production, management, distribution and sponsorship of attractions and

the commercial operation of the rights held with respect to the audio and video recordings of attractions, pre-recorded videocassettes of musical attractions and pre-recorded music CDs, since at least as early as March 1981.

In support of the claim to benefit of subsection 12(2) of the Act, the Applicant submitted an affidavit of Alain Simard dated November 29, 1999 ("1999 Affidavit"). The Applicant also submitted comments in reply to the requirement of a disclaimer. On the strength of the affidavit of Alain Simard, the Registrar recognized that the Mark had become distinctive in Quebec and withdrew his objection in accordance with subsection 12(2) of the Act. He informed the Applicant that the registration would be limited to the province of Quebec, and this was accepted by the Applicant. For all intents and purposes, I note that the official letter in which the Registrar withdrew his objection is silent concerning the requirement of a disclaimer of the right to the exclusive use of Montréal. Consequently, for the purposes of this decision, I shall assume that this requirement was reconsidered following the Applicant's comments. I should add that the Registrar subsequently required that the Applicant disclaim the right to the exclusive use of FESTIVAL INTERNATIONAL DE JAZZ apart from the Mark for every province of Canada with the express exception of the province of Quebec. The Applicant filed an amended application including this disclaimer.

The application was published for purposes of opposition in the *Trade-marks Journal* dated January 9, 2002. I note that, according to the details in the publication of the application for registration, benefit of subsection 12(2) was applied with respect to the wares identified in (5) as well as to the services. At this point, it seems appropriate for me to recall that the decisions of the Examination Section of the Trade-marks Bureau are not authoritative in the eyes of the Board because the onus of proof and the proof itself vary in accordance with whether the case is brought before the examiner or before the Board [subsections 37(1), 38(1) and 38(8) of the Act].

Continental Bazar Inc. ("the Opponent") filed a statement of opposition on June 7, 2002. In accordance with the provisions of section 40 of the *Trade-marks Regulations, 1996* (the "Regulations"), the Opponent obtained leave to file an amended statement of opposition dated January 13, 2004. The grounds of opposition raised in the amended statement of opposition were as follows:

[TRANSLATION]

- (a) The Mark is not registrable under paragraph 12(1)(b) of the Act because it is clearly descriptive of the character or quality of the wares and services and/or of their place of origin.
- (b) The Mark is not distinctive within the meaning of section 2 of the Act because the Opponent and other entities, to the knowledge of the Applicant, offered for sale and sold in the City of Montreal clothing and other promotional articles bearing the trade-marks MONTREAL JAZZ FESTIVAL, FESTIVAL DE JAZZ DE MONTRÉAL, FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL and MONTREAL INTERNATIONAL JAZZ FESTIVAL, and have done so on a continuous basis since at least as early as the beginning of the 1990s. As a result, the Mark cannot distinguish and is not likely to distinguish the wares and services of the Applicant from the wares and services of other persons because of the use of the trade-marks mentioned above by the Opponent and by third parties.
- (c) The application does not meet the requirements of paragraph 30(i) of the Act in that the Applicant could not have been satisfied that it was entitled to use the Mark in association with the wares and services identified in the application because of the extent of the concurrent use in the City of Montreal of the trade-marks mentioned in (b) by the Opponent and other entities, the whole to the knowledge of the Applicant.
- (d) The application does not meet the requirements of paragraph 30(b) of the Act in that the Applicant did not use the Mark in association with the wares and services but rather at all times used the trade-mark FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL & Drawing, illustrated below, which is the subject of registration No. TMA 325,938 held by the Applicant.



(e) In the alternative, the application does not meet the requirements of paragraph 30(b) of the Act in that the Applicant has not used the Mark in association with the wares and services since the dates alleged in the application.

(f) Given the grounds of opposition set out in (d) and (e) above, the Mark is not distinctive within the meaning of section 2 of the Act in that it does not distinguish the wares and services of the Applicant from the wares and services of other persons.

In accordance with section 40 of the Regulations, the Applicant obtained leave to file an amended counter statement dated July 28, 2004. Both parties submitted evidence. None of the deponents was cross-examined. Only the Applicant filed written arguments. Both parties were represented at the hearing.

Evidence of the Opponent

The evidence filed under section 41 of the Regulations consisted of an affidavit of William Billy Burak dated February 14, 2003.

Mr. Burak, the President of the Opponent, stated that since at least 1976, the Opponent has operated a retail clothing business under the name of Les Vêtements Galaxie Bleue Enr. located at 276 Ste-Catherine Street West in Montreal, between Jeanne Mance and Bleury. He stated that since the late 1980s, the Applicant had presented a musical event annually in Montreal starring jazz musicians and that for at least the last ten years, the musical events, which included live outdoor performances, had taken place on Ste-Catherine Street West between Bleury and St-Laurent, which is where the Opponent's business is located.

Mr. Burak stated that articles of clothing bearing the Mark MONTREAL JAZZ FESTIVAL had been sold continually in the Opponent's business since the 1990s, namely T-shirts since at least 1990, sweat shirts since at least 1998 and hats since at least 1999. The only direct evidence filed by Mr. Burak in support of this alleged use consisted of a sampling of T-shirts (Exhibits 1 to 9) and a peak cap (Exhibit 10) on which the words MONTREAL JAZZ FESTIVAL appear. There was no specimen showing the use of MONTREAL JAZZ FESTIVAL in association with sweat shirts. There was no invoice showing sales of T-shirts, sweat shirts or peak caps by the Opponent

at any time whatsoever. Furthermore, Mr. Burak did not give any details of the Opponent's revenues with respect to sales of T-shirts, sweat shirts or peak caps on which the words MONTREAL JAZZ FESTIVAL appeared. I should add that there was no information concerning promotional activities of which the Opponent's mark MONTREAL JAZZ FESTIVAL was the subject.

Mr. Burak stated that since at least 1998 the Applicant was aware of the sale by the Opponent of clothing bearing the trade-mark MONTREAL JAZZ FESTIVAL and that, as a matter of fact, the Applicant instructed its counsel to send letters giving notice of default to the Opponent. It filed copies of these letters giving notice of default, dated July 9, 1998, June 30, 1999, July 6, 2000, June 21, 2001 and June 25, 2002 (Exhibits 11 to 15). Mr. Burak added that despite the letters giving notice of default, the Applicant did not take any steps to have the Opponent cease selling articles of clothing bearing the mark MONTREAL JAZZ FESTIVAL. At the hearing, the Applicant's agent suggested that the letters adduced in evidence by Mr. Burak did not constitute complete evidence of the steps taken by the Applicant. The Applicant's agent also noted that the Applicant sent letters giving notice of default without prejudice to any of its available legal rights and remedies. It seems sufficient for me to note that the letters giving notice of default do not in themselves constitute evidence of the allegations they contain. However, I am prepared to accept that Exhibits 11 to 15 prove that the Opponent received the letters giving notice of default.

Mr. Burak stated that 3429943 Canada Inc., of which his wife is the President, operates a retail toy and clothing business located at 288 Ste-Catherine Street West in Montreal, between Jeanne Mance and Bleury. This business operated under the trade name J.R. Steiner in 1998 and 1999 and has operated under the trade name Eve and Zoë since 2000. He added that he had been informed by his wife that T-shirts bearing the mark MONTREAL JAZZ FESTIVAL are sold in this business and he attached to his affidavit a sampling of T-shirts sold since 1998 (Exhibit 16), since 2000 (Exhibit 17) and since 2001 (Exhibit 18). Mr. Burak stated that since at least 1998, the Applicant was aware that the business carried on by his wife's company sold clothing bearing the trade-mark MONTREAL JAZZ FESTIVAL. He attached to his affidavit copies of letters giving notice of default dated July 9, 1998, June 30, 1999, and June 26, 2001, sent to the company (Exhibits 19 to 21). He added that his wife had informed him that despite these letters,

the Applicant did not take any steps to ensure that 3429943 Canada Inc. ceased sales of articles of clothing bearing the mark MONTREAL JAZZ FESTIVAL. I note that there is no evidence that Mr. Burak is an officer or director of 3429943 Canada Inc. or that he has personal knowledge of the use of the mark MONTREAL JAZZ FESTIVAL by the said company. Moreover, no reason was given as to why a person having direct knowledge of the activities of 3429943 Canada Inc. and of its use of MONTREAL JAZZ FESTIVAL, such as, for example, Mr. Burak's wife, would not have been able to produce the evidence in question [see *R. v. Khan*, [1990] 2 S.C.R. 531]. Consequently, I am of the view that Mr. Burak's statements concerning the activities of 3429943 Canada Inc. are inadmissible since they consist of hearsay evidence.

Mr. Burak identified ten retail businesses located on Ste-Catherine Street West in Montreal that he personally had visited each year during the three to five years preceding his affidavit. He confirmed that T-shirts bearing the mark MONTREAL JAZZ FESTIVAL were offered for sale and sold in each of these businesses, especially between June and October. Finally, he indicated that during the five years preceding the signing of his affidavit, he personally observed that T-shirts bearing the mark MONTREAL JAZZ FESTIVAL were offered for sale and sold in souvenir stores located in Old Montreal, particularly between June and October. The Opponent submits that these statements of Mr. Burak show the use of the mark MONTREAL JAZZ FESTIVAL by third parties whereas the Applicant submits that these statements are inadmissible in that they consist of hearsay. I do not see the need to determine the admissibility of Mr. Burak's statements since his statements in themselves do not constitute evidence of use of the mark MONTREAL JAZZ FESTIVAL in association with T-shirts in accordance with subsection 4(1) of the Act.

Evidence of the Applicant

The evidence consists of two affidavits of Alain Simard, President and Director of the Applicant since July 1, 1981, and President of Équipe Spectra Inc. ("Spectra") since February 1, 1983. The first affidavit, dated September 18, 2003 ("the 2003 Affidavit"), was filed under section 42 of the Regulations whereas the second affidavit, dated November 9, 2004 ("the 2004 Affidavit"), was filed as additional evidence in accordance with subsection 44(1) of the Regulations.

By way of preliminary remarks, I must note that Exhibit S-1 to the 2003 Affidavit consists of a copy of the 1999 Affidavit but without its Exhibits. Although it indicated that it was prepared to file again the exhibits to the 1999 Affidavit, the Applicant asked the Registrar to refer to the file of the application for registration, which I consider to be appropriate in this case.

In his 2003 Affidavit, Mr. Simard restates the information contained in the 1999 Affidavit concerning the use of the Mark before the application for registration was filed. Furthermore, he introduced in evidence information concerning the use of the Mark during the years 1999 to 2003. In his 2004 Affidavit, Mr. Simard provides additional information concerning the use of the Mark since the different dates claimed in the application for registration. For the purposes of this decision, I shall consider the evidence of the Applicant by considering the 2004 Affidavit at the same time as the 2003 Affidavit, it being understood that a copy of the 1999 Affidavit is an integral part of the 2003 Affidavit.

Mr. Simard states that he had assigned his rights in the Festival International de Jazz de Montréal name, corporate name and trade-mark as well as the related goodwill to the Applicant on March 9, 1981. He adds that the Applicant, which was established on March 9, 1981, is a not-for-profit company involved in particular in the field of entertainment and attractions and the related souvenir articles. The Applicant's surpluses are returned to the public in the form of free concerts. Mr. Simard asserts that since at least as early as June 1980, the Applicant and he, as the predecessor of the Applicant, organized and presented annually a cultural event ("the Event") offering a wide variety of entertainments and attractions in association with the Mark. Besides music, the Event included, depending on the year, public entertainers including clowns, jugglers and other acrobats, workshop meetings with various artists, improvisation, make-up, a musical park for children, poetry, musical reviews, multimedia performances and theatre.

According to Mr. Simard's statements, Spectra, which carries on business as Azur and/or Les Articles Promotionnels Azur, acts as the exclusive supplier for the manufacture, distribution and marketing of the wares associated with the Mark under a licence pursuant to which the Applicant exercises control over the characteristics and quality of the wares. Spectra, under a production under licence contract of mandate, also acts as the producer of the Event. Spectra is involved in

the recording of attractions for television, renting performance spaces and seeking and recruiting sponsorships.

Mr. Simard gives a detailed description of the Event including the duration, number of performances, artists, spectators and employees over the years.

In the 1999 Affidavit and the 2003 Affidavit, Mr. Simard refers to various methods of using the Mark in association with the holding of the Event, including exhibiting the Mark during the Event, during the sale and distribution of tickets for attractions, in advertisements of the Event and when prizes were awarded during the Event.

Depending on the annual distribution of the moneys spent to promote the Event, in the written press, on the radio and television, at press conferences and in other ways, during the years 1989 to 2003, these sums totalled approximately \$27,797,863. According to Mr. Simard, media coverage before, during and after the Event and the reputation of the Event in the tourism and cultural industry also created advertising for the services associated with the Mark.

The 1999 Affidavit and the 2003 Affidavit are accompanied by a large number of exhibits designed to establish the use of the Mark from the alleged date in association with the services identified in the application. Rather than specifically describing the exhibits and the years concerned, I feel for the purposes of my decision that it will be sufficient to identify the exhibits in question in a general way: copies of the official programs for the Event; a video-cassette of a documentary made on the 16th anniversary of the Event; schedules of concerts; samples of photographs taken during the Event; posters; advertising brochures, Friends of the Festival cards; tickets; samples of newspaper advertisements; examples of French television advertising and English television advertising; a video-cassette of an attraction recorded on July 6, 1997, and broadcast on Canadian television channels; samples of press releases; a pouch-folder given to media representatives at press conferences; photographs of advertising panels in bus shelters in the Greater Montreal area; extracts of information from the Applicant's Web site; stationery items; samples of press releases and press clippings concerning the prizes awarded at the Event; samples of press clippings from the main newspapers across Canada and local newspapers. I

should add that colour reproductions of the posters announcing the 1st Event in 1980 and the 2nd in 1981 were filed with the 2004 Affidavit.

In each of his affidavits, Mr. Simard makes statements concerning the use of the Mark in association with the wares since the dates alleged in the application and he attaches various exhibits to establish this use. Once again I feel that it is sufficient for me to identify the Exhibits in question in a general way: catalogues concerning the wares offered for sale at the Event; a T-shirt; a decorative pin; a note pad; a key holder; a specimen of the plastic bag in which the wares were typically handed to consumers when they were purchased; photographs of a candle, bookmark and pen; a colour photograph of a T-shirt sold at the 1st Event.

According to Mr. Simard, the financial support and services provided by the sponsors contributed to the renown gained by the Event over the years.

Mr. Simard gave an annual breakdown of the revenues earned by "holding the Event" for the years from 1989 to 2003, which totalled approximately \$156,455,000.

I shall now consider the grounds of opposition, but not necessarily in the order in which they were argued.

Paragraph 12(1)(b)

I reproduce below the ground of opposition as drafted in paragraph (a) of the amended statement of opposition:

The trade mark "FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL" is not registrable, having regard to the provisions of Section 12(1)(b), in that such trade mark is clearly descriptive of the character or quality of the wares and services in association with which it has allegedly been used and/or of their place of origin.

The Opponent alleges essentially that the Mark is not registrable under paragraph 12(1)(b) because it is clearly descriptive of the character or quality of the wares and services and/or of their place of origin. I am of the view that the Applicant properly argued that the ground of

opposition was not validly argued since it does not disclose any fact in support of the Opponent's allegations, which are vague and written as alternatives.

In light of the foregoing, I reject the ground of opposition because it is merely a restatement of the prohibition on registering a trade-mark that is clearly descriptive of the character or the quality of the wares and services or of their place of origin, as provided in paragraph 12(1)(b) of the Act [see *Industries Lassonde Inc. v. Sun Pac Foods Limited*, [2006] F.C. 1077 (F.C.T.D.)].

Section 30

The relevant date for considering the grounds of opposition is the date on which the application for registration was filed [*Georgia-Pacific Corp v. Scott Paper Ltd.* (1984), 3 C.P.R. (3d) 469 (T.M.O.B.)]. The Applicant has the onus of establishing that its application complies with the provisions of paragraphs 30(i) and 30(b), the Opponent having first to establish the facts on which it relies in order to raise this ground of opposition [see *Joseph E. Seagram & Sons Limited v. Seagram Real Estate Ltd.* (1984), 3 C.P.R. (3d) 325 (T.M.O.B.); *John Labatt Ltd. v. Molson Companies Ltd.* (1990), 30 C.P.R. (3d) 293 (F.C.T.D.)].

Paragraph 30(i)

Following my consideration of the evidence of the Opponent, I find that it did not establish the use of the trade-marks MONTREAL JAZZ FESTIVAL, FESTIVAL DE JAZZ DE MONTRÉAL, FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL and MONTREAL INTERNATIONAL JAZZ FESTIVAL by third parties as of the relevant date. I find also that the Opponent did not establish its use of the trade-marks FESTIVAL DE JAZZ DE MONTRÉAL, FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL and MONTREAL INTERNATIONAL JAZZ FESTIVAL.

Despite the shortcomings in the evidence of the Opponent concerning its use of the trade-mark MONTREAL JAZZ FESTIVAL, I accept that the notice of default dated July 9, 1998, shows that the Applicant, as of the relevant date, knew of the use of the Mark by the Opponent in association with T-shirts. However, I am of the view that this fact is not sufficient to establish that the Applicant did not sincerely make the statement required by paragraph 30(i) of the Act.

There was no evidence showing bad faith on the part of the Applicant [see *Sapodilla Co. Ltd. v. Bristol-Myer Co.* (1974), 15 C.P.R. (2d) 152 (T.M.O.B.)].

In light of the foregoing, I reject the ground of opposition based on paragraph 30(i) of the Act.

Paragraph 30(b)

I should note that the Opponent argued two grounds of opposition separately. To the extent that the Applicant can more easily access the relevant facts, the onus of establishing the facts on which the Opponent relies to express its grounds of opposition based on paragraph 30(b) is relatively light [see *Tune Masters v. Mr. P's Mastertune Ignition Services Ltd.* (1986), 10 C.P.R. (4th) 84 (T.M.O.B.)]. The Opponent can establish these facts by relying on the evidence of the Applicant [see *Labatt Brewing Company Limited v. Molson Breweries, a Partnership* (1996), 68 C.P.R. (3d) 216 (F.C.T.D.)]. In this case, however, the Opponent must establish that this evidence is clearly inconsistent with the statements of the Applicant [see *York Barbell Holdings Ltd. v. ICON Health & Fitness, Inc.* (2001), 13 C.P.R. (4th) 156 (T.M.O.B.)].

First, the Opponent did not file any evidence to support either of its grounds of opposition based on paragraph 30(b). With respect to the ground of opposition raised in paragraph (d), at the hearing, the agent for the Opponent admitted that the Applicant had properly argued that the use of the mark FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL in the form of a drawing constituted use of the Mark. For the purposes of this decision, I should add that there was evidence of the use of the Mark in the form of words in the file. As far as the ground of opposition raised in paragraph (e) is concerned, the evidence of the Applicant is not clearly inconsistent with the dates alleged in the application.

In light of the foregoing, I reject each of the grounds of opposition based on paragraph 30(b) of the Act.

Distinctive character

The Opponent also separately raised two grounds of opposition based on paragraph 38(2)(d) of the Act.

The first ground, as set out in paragraph (b), states that the Mark cannot be distinctive and is not likely to distinguish the wares and services of the Applicant from the wares and services of other persons because of the use in the City of Montréal of the trade-marks MONTREAL JAZZ FESTIVAL, FESTIVAL DE JAZZ DE MONTRÉAL, FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL and MONTRÉAL INTERNATIONAL JAZZ FESTIVAL by the Opponent and by third parties in association with clothing and other promotional items. Although the Applicant has the onus of establishing that the Mark is distinctive across Canada [see *Muffin Houses Incorporated v. The Muffin House Bakery Ltd.* (1985), 4 C.P.R. (3d) 272 (T.M.O.B.)], the Opponent must adduce evidence from which it can be concluded that the facts alleged in support of this ground of opposition existed.

I found earlier that there was no evidence of use of the trade-marks FESTIVAL DE JAZZ DE MONTRÉAL, FESTIVAL INTERNATIONAL DE JAZZ DE MONTRÉAL and MONTRÉAL INTERNATIONAL JAZZ FESTIVAL by the Opponent or by third parties. I also concluded that the allegations of Mr. Burak concerning use of the mark MONTREAL JAZZ FESTIVAL by third parties are either inadmissible or insufficient to prove use within the meaning of subsection 4(1) of the Act. Consequently, the only evidence in the file concerns use of the mark MONTREAL JAZZ FESTIVAL by the Opponent in association with articles of clothing. Given the shortcomings in the evidence, it is impossible to find that as of the date on which the statement of opposition was filed, the trade-mark was sufficiently known in the City of Montreal to deny the distinctive character of the mark [see *Motel 6, Inc. v. No. 6 Motel Ltd.*, 56 C.P.R. (2d) 44 (F.C.T.D.); *Bojangles' International, LLC v. Bojangles Café Ltd.* (2006), 48 C.P.R. (4th) 427 (F.C.T.D.); *Metro-Goldwyn-Mayer Inc. v. Stargate Connections Inc.* (2004), 34 C.P.R. (4th) 317 (F.C.T.D.)]. Consequently, I reject the ground of opposition identified in paragraph (b) of the amended statement of opposition.

With respect to the second ground, as expressed in paragraph (f), I feel that it relates to paragraphs (d) and (e) and must accordingly be interpreted together with the allegations of the Opponent in support of the grounds of opposition based on paragraph 30(b) of the Act. I am not prepared to accept that the ground of opposition, as worded, must be interpreted together with

the allegation in paragraph (a) that the Mark is contrary to the provisions of paragraph 12(1)(b) of the Act. In my opinion, my interpretation is supported by the fact that the ground raised in paragraph (f) was not in the original statement of opposition, which included the ground of opposition raised in paragraph (a).

I consider that there is no basis for the ground of opposition as expressed in paragraph (f) under paragraph 38(2)(d) of the Act and it must be rejected. I should add that if I have erred in rejecting the ground of opposition for this reason, its fate would depend on the fate reserved for the grounds of opposition based on paragraph 30(b), which were rejected.

Conclusion

By virtue of the powers delegated to me by the Registrar of Trade-marks under the provisions of subsection 63(3) of the Act, I reject the opposition to the application for the registration of the Mark, the whole in accordance with the provisions of subsection 38(8) of the Act.

DATED AT GATINEAU, QUEBEC, THIS 26TH DAY OF OCTOBER 2006.

Céline Tremblay
Acting Chair
Trade-marks Opposition Board.